

1
2
3
4
5
6
7
8 ADIL K HIRAMANEK and RODA K
9 HIRAMANEK,

10
11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN JOSE DIVISION

15
16 Plaintiffs,
17 v.
18 L. MICHAEL CLARK, et al.,
19 Defendants.

20 Case No. 13-00228

21 **ORDER GRANTING IN PART AND
22 DENYING IN PART MOTION TO
23 STRIKE ANSWER OF
24 McCHRISTIAN, PLETT, AND
POLUMBUS**

25 [Re Docket No. 143]

26 Plaintiff Adil Hiramanek moves to strike the answer filed by defendants Daryll McChristian,
27 Polumbus (erroneously sued as “Polumbo”), and Plett (collectively “Officers”). Dkt. No. 143
28 (Motion to strike); Dkt. No. 130 (Answer). All three are allegedly court security officers at the Santa
Clara County Superior Court who interacted with Hiramanek when he went through court security
and at other times in the courthouse. For the reasons explained below, the court grants in part and
denies in part the motion to strike.

29
30 **I. Background**

31 This court allowed Hiramanek to proceed against the Officers on claims 10 (against
32 Polumbus and Plett), 17 (against McChristian and Plett), and 44 (against McChristian and Plett) in
33 their individual capacities only. Dkt. No. 98 at 12. The claims are:

1 **Claim 10:** Section 1983 claim based on alleged violation of Adil's Fourth Amendment
 2 rights, including "unreasonable and invasive bodily search, search of his property, seizure of his
 3 property, including mobile phone, deleting information/writing" and "unreasonabl[e] [detention] for
 4 unreasonably long periods of time." Dkt. No. 94-1 at ¶¶ 108-110, 116-119, Revised Second
 5 Amended Complaint (RSAC).

6 **Claim 17:** Section 1983 claim based on alleged violations of Adil's Fourth and Fifth
 7 Amendment rights, when McChristian and Plett allegedly detained, interrogated, and confined Adil
 8 at the Santa Clara County Superior Courthouse. RSAC at ¶¶ 183, 188, 195, 201-203.

9 **Claim 44:** Section 1983 claim based on alleged violations of Adil's Fourth and Fifth
 10 Amendment rights, when McChristian and Plett allegedly used excessive force against Adil when
 11 arresting him. RSAC at ¶¶ 1070-1072.

12 After being served with the RSAC, Officers filed an answer, Dkt. No. 130, and plaintiff
 13 moved to strike, Dkt. No. 143. Before Officers filed an opposition to the motion to strike, this court
 14 issued its Order Granting in Part and Denying in Part Plaintiff's Motion to Strike the Answer of
 15 Superior Court of California, County of Santa Clara. Dkt. No. 163. After receiving the Order
 16 relating to the Superior Court's answer, Officers filed their opposition, Dkt. No. 174,
 17 acknowledging that some defenses included in their answer were improper negative defenses based
 18 on the court's prior Order. Dkt. No. 174 at 2-3. Plaintiff then filed a reply. Dkt. No. 176.

19 II. Analysis

20 A. The *Twombly/Iqbal* standard applies to affirmative defenses

21 Although the Ninth Circuit and other circuit courts have yet to rule on the issue, this Court
 22 has joined the majority of other district courts in applying the heightened pleading standard set forth
 23 in *Twombly* and *Iqbal*¹ to affirmative defenses. *See Spears v. First Am. eAppraiseIt*, 5-08-CV-
 24 00868-RMW, 2013 WL 1748284 (N.D. Cal. Apr. 23, 2013).

25 Applying the standards set forth in *Twombly* and *Iqbal* to affirmative defenses requires that
 26 "[w]hile a defense need not include extensive factual allegations in order to give fair notice, bare
 27 statements reciting mere legal conclusions may not be sufficient." *Perez v. Gordon & Wong Law*

28 ¹ *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

1 *Grp., P.C.*, 11-CV-03323-LHK, 2012 WL 1029425 at *8 (N.D. Cal. Mar. 26, 2012) (internal
2 quotation marks omitted)). A defense may be insufficient “as a matter of pleading or a matter of
3 law.” *Scott v. Fed. Bond & Collection Serv., Inc.*, No. 10-2825, 2011 WL 176846, at *4 (N.D. Cal.
4 Jan. 19, 2011). “Just as a plaintiff’s complaint must allege enough supporting facts to nudge a legal
5 claim across the line separating plausibility from mere possibility, a defendant’s pleading of
6 affirmative defenses must put a plaintiff on notice of the underlying factual bases of the defense.”
7 *Perez*, 2012 WL 1029425, at *8 (internal quotation marks omitted).

8 “If the Court determines that a pleading is deficient, it may strike the pleading and require
9 the non-moving party to submit an amended pleading that includes more specific allegations.” *Id.*
10 When striking an affirmative defense, leave to amend should be freely given so long as no prejudice
11 to the moving party results. *Wyshak v. City National Bank*, 607 F.2d 824, 826 (9th Cir.1979).

12 **B. Application of *Twombly/Iqbal* to specific defenses**

13 **1) Allegations not reflected in the complaint:** Officers agree to remove this affirmative defense
14 because it does not apply to § 1983 claims. Dkt. No. 174 at 3.

15 **2) Failure to state claim:** Officers agree to remove this affirmative defense, which is an improper
16 negative defense. Dkt. No. 174 at 2. However, Defendants may still assert this argument as an
17 ordinary defenses to liability. *See Hernandez v. Dutch Goose, Inc.*, No. 13-3537, 2013 WL
18 5781476, at *7 (N.D.Cal. Oct. 25, 2013) (“Although struck with prejudice as affirmative
19 defenses, the court makes clear that Defendants are not precluded from arguing, in a motion or
20 at trial, that [Plaintiff] has failed to state a claim.”).

21 **3) Comparative fault—Plaintiff:** The court agrees that this defense is conclusory. The defense
22 lacks any supporting facts or explanation as to how the defense applies to this case. The motion
23 to strike is granted without prejudice to allow defendants to allege sufficient facts.

24 **4) Comparative fault of third persons:** The court agrees that this defense is conclusory. The
25 defense lacks any supporting facts or explanation as to how the defense applies to this case. The
26 motion to strike is granted without prejudice to allow defendants to allege sufficient facts.

1 **5) Actual cause:** This is not an affirmative defense and is stricken with prejudice. *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1088 (9th Cir.2002) (“A defense which demonstrates that plaintiff has not met its burden of proof is not an affirmative defense.”).

2 **6) Proximate cause:** This is not an affirmative defense and is stricken with prejudice. *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1088 (9th Cir.2002) (“A defense which demonstrates that plaintiff has not met its burden of proof is not an affirmative defense.”).

3 **7) Control of third persons:** This is not an affirmative defense and is stricken with prejudice. *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1088 (9th Cir.2002) (“A defense which demonstrates that plaintiff has not met its burden of proof is not an affirmative defense.”).

4 **8) Good faith (immunity):** As the complaint recognizes, the defendant Officers sued are state court employees or officers. This defense is appropriate and sufficiently pled when read in light of the facts alleged in the complaint and the identity of the defendants.

5 **9) Discretionary immunity:** As the complaint recognizes, the defendant Officers sued are state court employees or officers. This defense is appropriate and sufficiently pled when read in light of the facts alleged in the complaint and the identity of the defendants.

6 **10) No violation of rights:** This is not an affirmative defense and is stricken with prejudice. *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1088 (9th Cir.2002) (“A defense which demonstrates that plaintiff has not met its burden of proof is not an affirmative defense.”).

7 **11) Malicious intent:** The court agrees that this defense is conclusory. The defense lacks any supporting facts or explanation as to how the defense applies to this case. The motion to strike is granted without prejudice to allow defendants to allege sufficient facts.

8 **12) Consent:** This is not an affirmative defense and is stricken with prejudice. *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1088 (9th Cir.2002) (“A defense which demonstrates that plaintiff has not met its burden of proof is not an affirmative defense.”).

9 **13) Failure to mitigate:** The court agrees that this defense is conclusory. The defense lacks any supporting facts or explanation as to how the defense applies to this case. The motion to strike is granted without prejudice to allow defendants to allege sufficient facts.

1 **14) Estoppel:** The court agrees that this defense is conclusory. The defense lacks any supporting
2 facts or explanation as to how the defense applies to this case. The motion to strike is granted
3 without prejudice to allow defendants to allege sufficient facts.

4 **15) Waiver:** This defense is not relevant to the § 1983 claims at issue.

5 **16) Assumption of risk:** This defense is not relevant to the § 1983 claims at issue.

6 **17) Frivolous, vexatious:** This is not an affirmative defense and is stricken with prejudice. *Zivkovic*
7 *v. S. Cal. Edison Co.*, 302 F.3d 1080, 1088 (9th Cir.2002) (“A defense which demonstrates that
8 plaintiff has not met its burden of proof is not an affirmative defense.”).

9 **18) Unclean hands:** The court agrees that this defense is conclusory. The defense lacks any
10 supporting facts or explanation as to how the defense applies to this case. The motion to strike is
11 granted without prejudice to allow defendants to allege sufficient facts.

12 **19) Mandatory duties (immunity):** As the complaint recognizes, the defendant Officers sued are
13 state court employees or officers. This defense is appropriate and sufficiently pled when read in
14 light of the facts alleged in the complaint and the identity of the defendants.

15 **20) Immunity—lack of federal right:** As the complaint recognizes, the defendant Officers sued are
16 state court employees or officers. This defense is appropriate and sufficiently pled when read in
17 light of the facts alleged in the complaint and the identity of the defendants.

18 **21) Policy, custom, or practice:** Officers agree to remove this affirmative defense because there is
19 no *Monell* claim. Dkt. No. 174 at 2.

20 **22) Exhaustion of administrative remedies:** Officers agree to remove this affirmative defense
21 because it does not apply to § 1983 claims. Dkt. No. 174 at 3.

22 **23) No injunctive relief:** Officers agree to remove this affirmative defense because it does not apply
23 to § 1983 claims. Dkt. No. 174 at 3.

24 **24) Standard of care—medical:** Officers agree to remove this affirmative defense because medical
25 care is not at issue “if plaintiffs [sic] stipulate that medical care is not at issue in this litigation.”
26 Dkt. No. 174 at 2-3. In reply, plaintiff agrees that this defense is not applicable to his § 1983
27 claim. Dkt. No. 176 at 2-3.

28

1 **25) Assumption of the risk—medical injury:** Officers agree to remove this affirmative defense
2 because medical care is not at issue “if plaintiffs [sic] stipulate that medical care is not at issue in
3 this litigation.” Dkt. No. 174 at 2-3. In reply, plaintiff agrees that this defense is not applicable to
4 his § 1983 claim. Dkt. No. 176 at 2-3.

5 **26) Informed consent:** This defense is not relevant to the § 1983 claims at issue.

6 **C. Other issues**

7 The answer does not seek affirmative relief. Although the answer seeks an award of costs,
8 the recovery of costs is not a request for affirmative relief. *Oster v. Standard Life Ins. Co.*, No. C 09-
9 00851 SBA, 2009 WL 1260174, at *2 (N.D. Cal. May 6, 2009).

10 Defendants agree to provide further answers to allegations in ¶¶ 106, 207, 208, and 115. Dkt.
11 No. 174 at 4. The remaining denials in the answer are proper. The paragraphs of the complaint that
12 defendants deny include vague language, terms of degree, legal conclusions, and other phrases that
13 make them ambiguous. Accordingly, a general denial is proper.

14 Plaintiffs request for sanctions under Rule 11 or 28 U.S.C. § 1927 is both improperly made
15 within the reply brief and is denied.

16 **III. Order**

17 For the reasons explained above, the court orders as follows:

18 • Affirmative defenses 1, 2, 5, 6, 7, 10, 12, 15, 16, 17, 21, 22, 23, 24, 25, and 26 are
19 struck with prejudice;
20 • Affirmative defenses 3, 4, 11, 13, 14, and 18 are struck without prejudice; and
21 • Affirmative defenses 8, 9, 19, and 20 are not struck.

22 Defendant Officers may file an amended answer by March 11, 2015.

23
24
25 Dated: February 18, 2015

26
27
28 
Ronald M. Whyte
United States District Judge